IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 73 (S/S) OF 2003.

Gopal Singh son of late Bhawan Singh
Resident of Village-Harmani
Post Office-Laasyari
District Chamoli. ……Petitioner.

Versus

District Judge Gopeshwar, Chamoli.
…….Respondent.

Mr. N.S. Negi, learned counsel for the Petitioner.
Mr. R. Dobhal, learned counsel for the Respondent.

Hon'ble Prafulla C. Pant, J.

1. This writ petition has been moved under Article 226 of the Constitution of India for mandamus directing the respondent to modify its order dated 6.2.1999 to the effect that the petitioner be appointed to class III post instead of class IV.

2. The brief facts of the case are that the petitioner's father Sri Bhawan Singh was a employee in class IV in the office of the District Judge Chamoli who died on 3.11.1998 before attaining the age of superannuation. The petitioner, eldest son of late Sri Bhawan Singh, made a representation to the District Judge, Chamoli at Gopeshwar for his appointment under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules 1974 according to his qualification. With the representation dated 24.11.1998 the petitioner submitted his mark sheets from High School to Post Graduation and was fully qualified for being appointed in the post of class III. On being told that there is no vacancy in class III, in view of the financial hardship of the family, the petitioner was compelled to join the service in class IV post in February 1999. Now, vacancies have occurred in

class III in the District Court Chamoli at Gopeshwar as such the petitioner made fresh representation on 4.10.2001 and 21.12.2002 for his appointment to class III post but to no avail. The petitioner has also knowledge of typing work as such from every angle he was qualified for class III post hence this writ petition.

3. Counter affidavit has been filed on behalf of the respondent in which it is admitted that the petitioner's father was a class IV employee in the Judgeship of Chamoli who died before age of superannuation. It is also admitted that on the representation of the petitioner for his appointment under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules 1974, he was appointed on class IV post on 6.2.1999. It is also not disputed that at that point of time there was no vacancy in class III. However, in the counter affidavit it is stated that petitioenr has willingly accepted the appointment and joined as class IV employee. It is further stated that vacancies, which occurred later, are required to be filled in accordance with rules as such the representation made by the petitioner in 2001-2002 are misconceived. The right accrued to the petitioner for appointment under aforesaid rules of 1974 stood exhausted after he got the employment in class IV post.

4. I heard learned counsel for the parties and perused the affidavit and papers annexed thereto by the parties.

5. The short question for consideration before this Court is whether the petitioner who was qualified for the appointment in class III post but appointed in class IV for the want of vacancy in class III, is wrongly denied appointment in the class III post after the vacancies occurred during his employment in the post of class IV.

6. Admittedly on the death of his father, the petitioner was appointed on 6.2.1999 in the class IV post in the Chamoli Judgeship under U.P.Recruitment of Dependants of Government Servants Dying in Harness Rules 1974. It is also not disputed that the petitioner was qualified for being posted in a class III post. Also, it is admitted between the parties that as there was no vacancy in class III post at the time when petitioner's father died and that is why he was given job on compassionate ground in class IV post. As such the short question is whether the petitioner is entitled to be promoted from the post of class IV to class III post after the vacancy occurred in the class III. On behalf of the petitioner my attention was drawn to the principle of law laid down in Sudhakar Srivastava Vs. Deputy Director of Education 2001 (1) A.W.C. 560 (L.B.) in which it has been held that the appointment to the dependent should be given to the post for which a person was qualified under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules 1974. However, in the said case the post of which the person was qualified was vacant, therefore, the said case law does not help the petitioner in this case.

7. Neither there is any provision in U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974 nor in U.P. Subordinate Civil Courts Ministerial Establishment Rules 1947 to promote a person appointed in class IV on compassionate ground to the post of class III on occurrence of the vacancy.

8. However, the petitioner alongwith other qualified class IV employees on completion of 5 years service is entitled for promotion as per Govt. orders within quota fixed for it through the test held by the District Judge. Since February 1999 now the petitioner has completed the 5 years

and he is post graduate. As such this writ petition can be disposed of with the observations that the petitioner can seek appointment within the quota reserved for the class IV employees of 5 years service, in the class III posts. Therefore, the writ petition is accordingly disposed of with the observations as above. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 10.08.2004.
P. Bandhavakar